

Relations industrielles Industrial Relations



The Ontario Labour Relations Board and the Part Time Workers

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Volume 43, numéro 3, 1988

URI : <https://id.erudit.org/iderudit/050437ar>

DOI : <https://doi.org/10.7202/050437ar>

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Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)

1703-8138 (numérique)

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Citer cet article

Pupo, N. & Duffy, A. D. (1988). The Ontario Labour Relations Board and the Part Time Workers. *Relations industrielles / Industrial Relations*, 43(3), 660–685.
<https://doi.org/10.7202/050437ar>

Résumé de l'article

Cet article traite des décisions de la Commission des relations du travail de l'Ontario relatives aux travailleurs à temps partiel entre 1976 et 1986. On y soutient que l'approche « structuraliste » en la matière est indispensable pour comprendre le rôle de la Commission dans le processus de la négociation collective. Dans cette perspective, on estime que son orientation se manifeste d'une manière subtile, complexe, voire contradictoire. Dans l'immédiat, elle peut paraître favoriser les revendications de la classe laborieuse en rejetant les réclamations de la classe dominante. À plus long terme, cependant, elle procède de façon à faire durer le système de classes, à protéger le capital et à maintenir l'hégémonie de la classe dominante.

Les décisions de la Commission touchant les travailleurs à temps partiel ne peuvent s'expliquer comme de simples concessions aux intérêts des employeurs ou comme des tentatives en vue d'entraver la syndicalisation des temps partiels. Comme les statistiques le démontrent, les décisions ont souvent donné raison aux requêtes des syndicats. À la longue, toutefois, la Commission n'a pas facilité la syndicalisation de cette catégorie de travailleurs. Son interprétation de l'Ontario Labour Relations Act, sa définition d'une « communauté d'intérêts », sa politique générale d'exclure les temps partiels des unités de négociation et sa conception du marché du travail ont joué contre la syndicalisation des travailleurs à temps partiel. La Commission s'en est remise à un stéréotype contestable de ces salariés et cela a justifié leur exclusion du processus de la négociation collective. Bien qu'il y ait eu des exceptions (et des exceptions aux exceptions), le résultat en est que les temps partiels sont devenus en Ontario une réserve de travailleurs fort inorganisés, marginaux, peu coûteux et qui ne cesse de s'accroître.

Les contradictions à l'intérieur des organisations ouvrières ont pu partiellement excuser la responsabilité de la Commission. Les syndicats sont en quelque sorte coincés. En soutenant l'inclusion des temps partiels dans les unités de négociation, ils peuvent mettre en danger le succès de leurs campagnes de recrutement. Par ailleurs, en acceptant leur exclusion, ils s'engagent tacitement dans un régime de négociations collectives qui est conforme aux rapports de force existants et se trouvent ainsi amenés au règlement des conflits et des griefs individuels au jour le jour. Les intérêts opposés au sein du monde ouvrier ainsi qu'une structure de négociation visant à des réformes et à des avantages immédiats ont favorisé l'état de marginalisation des travailleurs à temps partiel et masqué la participation de la Commission dans ce processus.

Le rôle de la Commission est aussi rendu équivoque par la nécessité où elle se trouve d'agir comme arbitre impartial. Il suffit de considérer les décisions de la Commission concernant les travailleurs à temps partiel et sa manière courante de justifier leur exclusion pour se rendre compte que, malgré sa neutralité « officielle », elle s'est employée à conserver le statut marginal des temps partiels.

En résumé, les constatations de la recherche démontrent que la Commission joue un rôle complexe et parfois contradictoire en agissant en qualité d'arbitre entre les points de vue des syndicats et des employeurs. Même si on peut noter certaines victoires syndicales, le contenu général des décisions et les déclarations de principes stéréotypées en ce qui a trait à cette catégorie de salariés indiquent que la Commission se comporte de manière à maintenir le statu quo pour les temps partiels.

The Ontario Labour Relations Board and the Part Time Workers

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and

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This paper examines Ontario Labour Relations Board decisions regarding the inclusion of part-time workers in bargaining units from 1976 to 1986.

Recent events and research underscore the fact that the state plays a central role in labour relations in Canada. The specific thrust of that role, however, remains unclear. For example, labour relations boards have been criticized for being both anti-labour and anti-business. Several studies have analyzed the role of the state in labour relations and the effect of state actions on the Canadian labour movement¹. This paper is intended as a contribution to this on-going inquiry. The specific focus is on the role of the Ontario Labour Relations Board (OLRB) in relation to efforts to organize part-time workers.

Research and commentary have recently drawn attention to labour relations legislation and particularly to the boards which administer this legislation². From this writing it is clear that actions of labour relations boards are seen to play an important part in either expediting or impeding the organizing process. For example, much attention has been paid to the Canadian Labour Relations Board (CLRB) ruling that banks may be unionized on a branch by branch basis³. This decision is described as a major union victory (although, in the long run, it is feared that organizing individual branches may be an expensive and fragmenting exercise). Conversely, other board policies are seen to stall or undermine organizing ef-

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** The authors would like to thank John Barkans for his research assistance and Carl Cuneo, Daniel Glenday, and an anonymous reviewer for their comments on earlier drafts of this paper.

forts⁴. From these studies, along with recent events,⁵ it is not clear whether labour relations boards can be appropriately characterized as pro- or anti-labour.

The specific relation between labour legislation, labour boards, and the unionization of part-time workers has previously drawn research interest. In 1978 Wendy Weeks analyzed thirty OLRB decisions reached between 1969 and 1974 which pertained to part-time employment⁶. While acknowledging that the numbers involved were too small to permit generalization, Weeks suggested that OLRB practice was unintentionally anti-labour since it limited the unionization of part-time workers while reinforcing their marginal employment status. OLRB policy, Weeks wrote, «is in danger of colluding in the perpetuation of an unregulated labour force for the convenience of management»⁷. For Weeks, the OLRB leaned heavily toward pro-employer practices.

In her book, *Women and Part-time Work*, Julie White supported Weeks' argument. Citing the expense, time, and energy consumed in the present organizing process, White pointed out that labour relations legislation «militates against» the unionization of part-timers by inadequately protecting workers from intimidation and prohibiting individual membership. These problems, she noted, are especially apparent in small workplaces which often employ part-time labour. Following Weeks, White specifically cited OLRB policy and process as impediments to the organizing effort⁸. In brief, the argument advanced by both Weeks and White is that the OLRB functions to slow or stall the organizing of part-time workers and in so doing perpetuates their marginal status.

The present research is intended as a follow-up to the work of White and particularly Weeks. An examination of the over 2,000 OLRB cases⁹ catalogued from January 1976 to July 1986 revealed 48 cases which pertained to part-time work¹⁰. These 48 were examined in detail to clarify the reasons underlying the Board's rulings and its general notions regarding part-time work.

In their discussions of part-time workers and labour board actions, Weeks, and to some extent White, adopt an 'instrumentalist' theory of the state. In their view, the state tends to support the dominant class by directly or indirectly responding to its requests. With respect to the practices of the OLRB, then, Weeks supports Ralph Miliband's general argument that when the state has intervened in labour disputes, the result has tended to favour employers¹¹. This perspective, however, fails to heed Leo Panitch's caution that it is essential to distinguish between the state's actions «on behalf of» the dominant class and its actions on its «behest»¹².

Departing from the 'instrumentalist' approach, the present study is compatible with 'structuralist' theories of the state. Viewed from this perspective, the state's implementation of programmes and policies beneficial to dominant class interests is linked to the structural contradictions and constraints within the capitalist economy¹³. The state functions to promote capital accumulation, and through agencies such as the OLRB, preserves the notion of the system's legitimacy and neutrality. The state's roles, accumulation and legitimation, are often in contradiction.

The state requires a prosperous economy since its own sources of revenue are derived from that prosperity¹⁴. However, in order to facilitate capital accumulation, the state works to maintain harmonious social conditions. The state and its agencies must be regarded as 'neutral' in order to gain the loyalty and support of other classes. Depending on the general state of the economy, the position of capital and labour at the time, and their relative involvements in the specific issue, the state, in some instances, may accede to working-class demands. As Vivienne Walters points out, the state must often respond to various and competing demands, and therefore, social policy reflects class struggle rather than simply the economic needs of a capitalist economy. In order to restore or maintain social balance in developing policy, the state must take into account labour's needs. In this way, the labour movement influences the state's actions¹⁵. An examination of the OLRB's recent decisions reveals this complex and contradictory process, and this simply reflects, then, the general dilemma of the modern state.

PART-TIME WORK AND THE OLRB: POLICY OF EXCLUSION

Part-time workers¹⁶ constitute an increasingly significant component of the Canadian labour force. In 1953, 2,8% of all jobs in Canada were part-time; today, 15% are part-time. Between 1976 and 1984 part-time work increased by 54,5% while full-time employment grew by only 10,7%¹⁷. Between 1980 and 1981 part-time work increased at three times the full-time rate and between 1981 and 1982 while full-time work actually decreased, part-time work continued to grow¹⁸. Only in the last few years has the increase in part-time work levelled off and presently full-time and part-time work are growing at a similar rate.

Analysts estimate that by 2000 one in five Canadians will work part-time. Currently, one-quarter of women in the paid labour force work part-time and 72% of all part-timers are women. In the absence of widely available, high quality, inexpensive child care, many women with small

children have no option other than part-time work. Male part-timers are generally students working after school. It is anticipated that in coming years the over 55 population will constitute a more significant portion of the part-time labour force¹⁹.

While there are obvious advantages to working part-time (flexible life-style, more 'free' time, *etc.*), there are clear disadvantages. As several studies have pointed out,²⁰ the part-time worker must cope with smaller economic rewards (low wages; few, if any, benefits), less job security, fewer career opportunities, low occupational esteem, little control over hours, lower rates of unionization, and so forth. For a growing number, these difficulties are compounded by the fact that they are unwilling part-timers. According to the Labour Force Survey, «growth in part-time employment between 1980 and 1984 (+ 297,000) is largely due to an increase (+ 264,000) in those employed part-time because they could not find full-time work»²¹.

As a significant source of inexpensive, flexible, and largely unorganized labour, the part-time work force poses an important challenge to the Canadian labour movement. At present it is estimated that only 15% of part-time jobs compared to 35% of full-time jobs are unionized, and in non-managerial/non-professional jobs, the proportion of full-time jobs unionized is approximately three times greater than part-time jobs unionized²². If the part-time work force continues to be largely unorganized as it expands, it will potentially weaken the labour movement. The existence of a large, unorganized part-time work force would seem to be rooted in one or more of the following: 1) the inability (sometimes due to structural constraints) or reluctance of part-timers to engage in organizing activities; 2) the 'ambivalence' of unions toward part-time workers;²³ 3) the successful efforts by employers to obstruct unionizing efforts; and 4) obstacles thrown up by the organizational and policy framework surrounding collective bargaining²⁴. It is primarily this last factor which will be examined here.

In Canada, collective bargaining rights are acquired when a trade union applies to the provincial labour board and establishes that it is representative of the workers and meets all other requirements. The union is then granted the right to become the exclusive bargaining agent for those employees. The employer is obliged to bargain exclusively with that union. The most important consideration shaping the structure of collective bargaining in Canada is the determination of the bargaining unit²⁵. The bargaining unit is not defined by the provincial labour relations acts, but rather, provincial labour boards determine the appropriate unit. Boards must take into account a number of considerations which are often contradictory when determining appropriate units. General reference is usually made to the notion of a «community of interest» among employees. Simp-

ly, boards must determine whether the group of employees applying for certification share common interests and therefore form a 'natural' community of workers.

Establishing the existence or non-existence of a community of interest among employees is not necessarily a straightforward preliminary step. The official stated purpose of the provincial labour boards is to facilitate the collective bargaining process. According to Paul Weiler, former Chairman of the B.C. Labour Board, the notion of 'community of interest' and actions of the provincial labour boards are in line with this purpose. Boards will define an appropriate unit, writes Weiler, as one for which «there is a realistic expectation that a majority would choose to engage in collective bargaining» at the time of application²⁶. If that were not the case, Weiler suggests, and the boards rigidly maintained guidelines to create «the most rational structure for negotiations in the hypothetical long run», then «almost inevitably that would abort the law's effort to give collective bargaining a real-life footing right now»²⁷.

Regardless of the labour boards' stated purpose in facilitating the collective bargaining process, in establishing the appropriateness of bargaining units, boards have employed particular notions regarding community of interest which may be based on inaccurate conceptions of the nature and structure of the labour force and of particular groups' orientations toward work. Such inaccuracies have tended to limit unionization for some categories of labour. There is no objective test to ascertain whether or not a community of interest exists. In reaching its decisions on community of interest, boards consider: 1) the nature of the work performed; 2) conditions of employment; 3) the skills of the employees; 4) administration; 5) geographic circumstances; and, 6) functional coherence and interdependence²⁸. The judgement is based on these somewhat concrete but relatively unmeasurable variables.

In the 48 cases before the OLRB between 1976 and 1986 involving part-time workers, there is a tendency for the Board to separate full-time workers from part-time workers based on the argument that these groups do not share a community of interest. The OLRB defines employees as 'part-time' when they *regularly* work less than 24 hours a week²⁹. This «twenty-four hour standard» dates back to the War Labour Board years³⁰ when the traditional work week was 48 hours. This standard is still used despite the fact that at present the full-time work week is usually between 35 and 40 hours. The Board's general policy is that employees working 24 hours a week or less *do not* share a community of interest with those who work 25 hours a week or more. The Board's approach functions to exclude part-time workers from bargaining units and thereby limits unionization³¹.

However, the process of arriving at this policy and the policy itself appear more complex and contradictory than suggested by Weeks' earlier analysis.

SEPARATION: EXCEPTIONS, AND EXCEPTIONS TO EXCEPTIONS

Rather than responding primarily to employer pressure to exclude part-time workers (and thus limit the union power base),³² the Board is juggling a variety of often conflicting elements: 1) the union's arguments for inclusion or exclusion; 2) the employer's arguments for inclusion or exclusion; 3) the interests of the employees; 4) the Board's responsibilities under the *Ontario Labour Relations Act (OLR Act)* to create a rational and orderly bargaining structure; 5) the Board's policy regarding the community of interest of part-time workers (based on a particular conception of part-timers); 6) the employees' ability to organize; 7) the viability of the bargaining structure; 8) the avoidance of fragmentation; 9) the historical separation of craft-based units; 10) agreements between bargaining parties on the appropriate definition of the unit; 11) geographical considerations; 12) the separation of plant and office; 13) the separation of blue and white collar units; 14) the separation of professional and supervisory employees; and 15) the placement of part-time workers and students³³. Predictably, in this complex adjudication, exceptions and exceptions to exceptions are not uncommon.

Exceptions to the general rule of separating part-time and full-time workers are made in situations involving craft workers. This was the case in *Premier Operating Corporation*³⁴ in which the Board specified that it is not a usual policy to exclude students and part-timers from craft units. The craft worker argument is used routinely in the construction industry. In *Evercrete Limited*, for example, the union sought to certify all employees while the company wished to exclude students and part-timers. The Board in this case ruled on the basis of past history, stating that «in bargaining units which are determined under the construction industry provisions of *The Labour Relations Act*, it has not been the practice of the Board to exclude either part-time employees or students»³⁵. The reasoning with respect to the construction industry is that work in this industry is mainly seasonal and therefore all workers share a 'community of interest', regardless of actual status.

The Board's usual position on the «community» of full-time and part-time craft workers was, however, contradicted in *Ontario Food Division (Food City) of the Oshawa Group Limited*. The union sought certification of all meat department employees, excluding part-timers and students, while the company argued that the appropriate unit would include all employees in the store, including part-timers and students. In presenting its

case, the company relied on *Inland Publishing Company Limited* in which it stated that the «Board's usual policy is not to exclude 24 hour people or students from a craft unit»³⁶. The company pointed out that all employees were paid by an hourly wage, received the same benefits and interchanged regularly with one another in the course of the working day³⁷. It was also noted that the store was managed as one unit. In reaching its decision, the Board reviewed applications made by and collective agreements entered into with the Amalgamated Meat Cutters and Butcher Workmen of North America with respect to supermarket employees. The Board found that the union had consistently applied for three separate and distinct bargaining units in supermarkets: 1) all full-time workers in meat departments, 2) all part-timers and students hired for school vacation periods, and 3) remaining full-time store employees.

While the Board acknowledged that the decision reached in 1969 in *Inland Publishing Company* to combine full and part-time craft workers was indeed its usual practice, it nevertheless ruled in the union's favour. Since there was a «long history of bargaining units of employees in meat departments which exclude persons who are regularly employed for not more than 24 hours per week and students employed during the school vacation period(s)», the Board ruled that the bargaining unit as set forth by the union (all meat department employees excluding students and part-timers) was appropriate³⁸. Despite a general tendency to create craft units as all-inclusive, in this case prior history and a definition of «appropriateness» of the unit have worked to exclude part-timers and students from the bargaining unit. While this ruling may have been advantageous to the union's strategists, it nevertheless perpetuates the marginal position of the part-time worker.

Another exception to the Board's general tendency to separate full-time and part-time workers involves situations in which upon separation there would be only one worker without appropriate representation. If that worker indicates that s/he desires representation then the Board will rule in favour of an all-inclusive unit³⁹. For the Board to rule otherwise would deny that worker's right to organize under the *OLR Act* since it has been previously established that one person does not constitute an appropriate bargaining unit. In such cases, therefore, it is not the Board's willingness to unite full-time and part-time workers into one unit, but rather its mandate to carry out the *OLR Act* which determines policy.

The Board's rulings in situations in which only one worker is left without an available and appropriate bargaining unit are sometimes complicated by the history of the workplace. If, for example, there was only one part-timer on the date of application but there had been a history of hiring part-time workers at the organization, then the Board would rule that

separate units be established. This was, in fact, the decision in *The Corporation of the Township of Schrieber*⁴⁰. The Board noted that since there had been a history of hiring part-time employees and this history was not confined to employing only one part-time employee, then the result of excluding the one person would not effectively deprive that person of «all access to collective bargaining». In making its decision, the Board referred to the lack of a community of interest between full-time and part-time employees.

Similarly, when there are no part-time workers employed at the date of application and no history of employing part-time labour, the Board will generally not exclude part-timers from the bargaining unit. In *Tip Top Tailors*, although there had been a widespread practice of hiring part-time workers at retail outlets and the company therefore sought exclusion of part-timers in the unit, when application for certification of tailors at the company's central tailoring shop in Toronto was made, there were no part-timers on staff at the central office, nor had there ever been any employed at this particular shop⁴¹. Based on the historical practices at the central shop, the Board ruled against the exclusion of part-timers. In this case the Board referred to the practices established at the central location and indicated that this was the key factor and not that the employer regularly hired part-timers at other locations. In this case the ruling was seen to favour the union's interests since the company might have adopted a strategy of hiring non-unionized part-timers had the Board ruled otherwise.

Cases revolving around questions of the presence, absence, or small numbers of part-time workers may be further complicated by other considerations. In *Mount McKay Feed Company, Limited* both the union and company had agreed to exclude students from the unit but disagreed over the exclusion of part-timers. The union favoured the inclusion of part-timers while the company desired their exclusion. In a majority decision, the Board ruled in favour of the company, citing its general practice of «linking students and part-time employees together»⁴². The dissenter, however, pointed out that although there would be more than one employee in the category of part-timers and students during the summer months, this was not the case at the date of application for certification and therefore the majority decision does indeed contravene the intention of the *OLR Act*, depriving the one part-timer of his/her right to engage in collective bargaining. The majority ruling in this case highlights the Board's distinct tendency to separate full-time and part-time workers and should not be misconstrued as a policy developed to separate casuals, seasonals, or students from full-time units.

In some circumstances, unions may protect full-timers in their bargaining units by negotiating clauses *about* part-timers in their collective agreements. As England notes, the distinction «between bargaining *about* part-timers and bargaining *on behalf of* them» is quite a fine one. If the union introduces a number of clauses, for example, specifying how and when part-timers may be employed, then it is bargaining *about* part-timers. If the same collective agreement includes provisions that would indicate that the clauses on part-timers would not afford any greater degree of protection on full-timers in the same unit, then the OLRB may decide on an all-inclusive unit, arguing that part-timers were incorporated in the unit by the parties by means of «voluntary recognition»⁴³. While part-timers in such cases may benefit from their unionized status, clearly the union's strategy is designed to protect full-time positions. With regard to long-term structural considerations, the outcome for the part-timer may be less than desirable, since it perpetuates the marginalized conception of the part-time worker.

EMPLOYERS' AND UNIONS' STRATEGIES

The complex and, on occasion, contradictory role played by the OLRB is apparent in the Board's responsiveness to *both* employer and union tactics and to *both* exclusionary and inclusionary requests from each. In 28 of the 48 cases involving part-time workers which appeared before the Board between 1976 and 1986, the position of part-time workers seemed to be at issue with respect to union and company strategies or organization campaigns. In Table I, these cases are broken down by union request, company request, and the decision reached by the Board. From this data and an analysis of the issues in some of the key cases, union and company strategies become apparent.

When the union seeks an all-inclusive unit, the organizers' research may indicate that the part-time workers are sympathetic to the union and it may be that the vote would be lost without the part-time element. Including part-timers in the unit would divert management's strategy of possibly hiring large numbers of unorganized part-timers, dividing the work force, and thereby weakening the union. Historically, the labour movement has raised the banner, 'strength in numbers' and strategically it must battle the commonplace company 'divide and rule' tactic. In cases where there are no part-time workers at the time of application, but there had been a history of hiring students, occasionals, seasonals, or perhaps regular part-time workers, it is essential that the union create a strong and large unit to avoid a company decision to alter its hiring pattern. Conversely, as apparent in the OLRB's decisions, it may seem that part-time workers in the particular

situation are disinterested in or even opposed to unionization. In these instances, the union may seek to exclude the part-timers and the company may argue for their inclusion. In short, depending on circumstances *either* labour or management may adopt a pro or anti inclusion strategy.

TABLE 1
OLRB Decisions by Union and Company Requests
N = 28

<i>Request</i>	<i>No. of Cases With Favourable Decision</i>	<i>No. of Cases With Unfavourable Decision</i>
Union requests singular unit	12	4
Company requests separate units	4	12
Union requests separate units	5	0
Company requests singular unit	0	5
Agreement on separate units	5	2
Agreement on singular units	0	0

A cursory reading of the table presented above suggests that unions hold a favoured position vis-a-vis the OLRB. This is not necessarily the case. Rather, the OLRB is responsible for carrying out the *OLR Act* which is intended to guarantee organizing rights to Ontario workers and in this construct, management is placed in the defensive as respondent. Unions' 'victories' at the OLRB simply symbolize the hard-won historical struggle waged by labour for representation within a predominantly non-unionized/anti-union status quo. In recognizing the opposing strategies of unions and managements, the Board has clearly stated that its decisions must not impede the objectives of the statute and therefore it must balance a variety of factors in reaching its decisions.

The Board's position was described in *The Board of Education for the City of Toronto* in which it cited an earlier decision, *K. Mart Canada Ltd.* Here the Board first set forth the conflicting interests of employers and unions in the collective bargaining process:

Trade unions generally find it easier to organize homogeneous, centralized groups of employees, and therefore, will often argue for a narrowly defined unit. Employers,

recognizing that a union will have greater difficulty organizing on a wider basis, and recognizing further that it may be administratively easier to bargain on a broader basis, often take the opposite tack. ... However, where the union has sufficient support to warrant certification for a broader constituency it will argue for a broader unit in the hope of augmenting the strength from which it will seek to bargain. In these circumstances the employers will be predisposed to seek a narrowing of the union's bargaining rights...⁴⁴

The Board represents its role as an impartial arbiter which balances not only competing interests, but also diverse objectives: facilitating collective bargaining, safeguarding individual rights, and creating viable bargaining structures. The Board specified its position in this regard:

In determining the appropriate bargaining unit, the Board does not give effect to one of these aims to the exclusion of the others. Rather, the task which falls to the Board on the exercise of its discretion under section 6(1) of the Act requires a balancing of these statutory objectives in the circumstances of each case.⁴⁵

Rather than clearly reflecting a pro or anti union disposition, the Board's rulings reflect its desire 'to be seen' to be fairly balancing the relevant facts. To what degree the «various factors» may tip the scale of balance in the Board's purview is not specified.

A detailed examination of the 12 cases in which the Board decided in favour of the union request for inclusion of part-timers and the 4 cases in which the Board supported the company request for exclusion reveal the Board's balancing effort. Out of the 12 cases in which the union requested an all-inclusive unit, the company's strategy was simply to perpetuate the divide and rule standard. The breakdown of these 12 cases by decision is as follows: four cases involved craft workers and the historical practice has been to establish one unit for these workers;⁴⁶ in three cases the establishment of separate units would have resulted in unnecessary fragmentation;⁴⁷ in three cases the remaining worker(s) would not constitute a viable unit and therefore bargaining rights would be effectively denied;⁴⁸ and in two cases there had been no history of part-time workers so separating part-timers may have essentially issued the company licence to adopt a new hiring strategy⁴⁹. In the four cases in which the Board ruled favourably with regard to the company's desire for separate units, two of the cases reflected the Board's usual practice of separating part-timers and students from full-time workers,⁵⁰ and in the other two, the Board applied the community of interest argument⁵¹.

The Board's apparent neutrality confounds the actual implications of its rulings. The Board is not simply pro-union when it rejects companies' 'divide and rule' tactics, nor is it pro-employer when it separates part-time and full-time workers. The exceptions (and exceptions to exceptions) as well

as the Board's acceptance of both exclusionary and inclusionary union strategies suggest that any one-dimensional assessment of the Board's role is unacceptable. However, the overall pattern of the Board's rulings has had implications for part-time workers. By espousing questionable assumptions about part-time workers and continuing to adhere to the established precedent (adopted by both individual employers and individual unions) that part-time workers do not share the interests of full-time workers, the Board has functioned to perpetuate the non-unionized status of part-time workers.

ASSUMPTIONS ABOUT PART-TIME WORKERS

Woven throughout the OLRB's statements on community of interest and labour force fragmentation is a stereotypical conception of the part-time worker. Specifically, the Board assumes that: 1) part-time workers are interested in immediate, short-term gains from employment; 2) part-time workers are less attached to the labour force; 3) part-time workers are less interested in collective bargaining; and 4) part-time workers choose to work part-time. For example, in *Leon's Furniture Limited*, the Board argued that «part-time employees are pragmatically concerned with immediate as opposed to long-term benefits with respect to improving their terms and conditions of employment»⁵². In *The Board of Governors of Ryerson Polytechnical Institute*, the Board maintained that part-time instructors in the evening studies programme are a «different breed» who were usually employed elsewhere during the day and had little in common with «professional academics»⁵³. And in *Toronto Airport Hilton*, the Board stated that «part-time employees and students generally tend to have less initial interest in collective bargaining». In this latter case the Board suggested that this relative disinterest in collective bargaining may impede the process since part-timers are «prone to oppose application for certification» and maintain their primary interest in establishing «a convenient work schedule and maximum short-term remuneration»⁵⁴. Finally, in a recent example, *Board of Education for the Borough of Scarborough*, the Board assumed an element of choice in the attraction to part-time work:

The employees in question work precisely one-half the hours of full-time employees and this fact is usually the critical advantage flowing to those employees attracted to part-time work.⁵⁵

It is clear that these assumptions underlie many of the community of interest and fragmentation arguments. It is assumed that part-time workers, like students, are only temporarily attached to the work force, are primarily interested in short-term, immediate gains, and are in a position to choose to work. As Weeks pointed out in 1978 and as is more extensively documented

today, many of these assumptions about the part-time worker are at best questionable⁵⁶. As noted earlier, increasing numbers of part-time workers are not willing part-timers. Similarly, evidence suggests many part-timers are attached to the work force and to their jobs on more than a purely temporary basis⁵⁷. Further, these arguments overlook the significance of possible similarities between full-time and part-time employees, such as in relative position vis-a-vis the employer, reasons for working, working conditions, job satisfaction, orientation to work, and so on.

At present, the Board not only assumes a dissimilarity in interests, but is inclined to assume potential conflict between the two groups:

As the panel in *Toronto Airport Hilton* ... indicated, it is this Board's experience that part-time employees have less initial interest in collective bargaining than do full-time employees because of the aforementioned attraction of part-time work. Indeed, it is our opinion that collective bargaining would have been impeded for entire industries had this Board taken any other view. It is uninstrusive to point to situations where parties are not providing for part-time and full-time employees in one collective agreement ... This is the end result of collective bargaining, after a relationship has matured and after the parties have come to an understanding over the proper balance of full-time to part-time work. In fact, without such an understanding, full-time and part-time employees may come into dramatic opposition should an employer decide to rely more heavily on part-time employees for reasons of economy and/or administrative efficiency. Finally, it is important to stress that none of the above deprives part-time employees of collective bargaining. Our approach responds only to the appropriateness of any bargaining unit where a party asks the Board to require their inclusion with regular full-time employees.⁵⁸

These questionable assumptions regarding part-time workers have coloured the Board's decisions and particularly its perception of communities of interest. In defining its role in facilitating the collective bargaining process, the Board usually carries out this role by favouring the separation of full-time and part-time workers.

PART-TIMERS AND STUDENTS: CONFUSION OF INTERESTS

While the Board tends to view part-timers and full-timers as having dissimilar interests, part-timers are seen as sharing a community of interest with students. Seasonals and casuals, however, are usually linked to the full-time work force. For example, in both *Spramotor Limited* and *Board of Education for the Borough of Scarborough*, seasonals or casuals were linked with full-time employees⁵⁹. In the latter case, the union sought separate full-time and part-time units with seasonals or temporary casuals as part of the full-time unit while the company sought a singular unit for part-time and full-time employees with the exclusion of casuals and tem-

porary workers. The Board agreed with the union's position, arguing on the basis of the differing interests between full-time and part-time workers and the similarity of interests between full-timers and seasonal or temporary workers.

In *Consumers Distributing Company Limited*, the company and union agreed upon separate units for full and part-timers, but the company further argued for a third unit for the seasonal workers hired on a fixed-term contract from late October to the end of December⁶⁰. Here, the Board ruled that the seasonal employees were properly part of the part-time unit, irrespective of the number of hours worked per week. The reasoning set forth was that «the characteristics and interests of these so-called 'seasonal' employees were not sufficiently distinct from those of the part-time and student bargaining unit to justify a separation from that unit»⁶¹. Again the Board's judgement reflected its notion of what constitutes a community of interest and that part-timers and students partake of such a community of interest.

The Board has generally argued that students alone would not constitute an appropriate unit, and therefore would be effectively denied bargaining rights, and that students and part-time workers should be treated *in tandem* to avoid fragmentation. Students and part-time workers were grouped together in several cases, including *St. Raphael's Nursing Home*, *Dominion Steel Export Company Limited*, *Kafko Manufacturing Limited*, *Toronto Airport Hilton*, *Stratford Shakespearean Festival Foundation of Canada*, and *Elizabeth Fry Society of Ottawa*⁶². While the decisions clearly re-iterated the Board's specific mandate in carrying out the *OLR Act*, its ruling in *Toronto Airport Hilton* specified its general use of the community of interest argument in this and similar situations. In the Board's view, students and part-timers share common interests since they ...

... are primarily concerned with maintaining a convenient work schedule which permits them to accommodate the other important aspects of their lives with their work and with obtaining short-term immediate improvement in remuneration rather than with obtaining life insurance, pension, disability, and other benefit plans; extensive seniority clauses; and other long-term benefits.⁶³

Here and in subsequent remarks it is evident that the community of interest argument relies on particular assumptions regarding the part-time worker.

The Board reviewed its arguments regarding community of interest in a 1984 decision involving the Ontario Public Service Employees Union and *The Board of Governors of Ryerson Polytechnical Institute*⁶⁴. Both parties had agreed to exclude students and part-timers from the bargaining unit. The union sought a single unit of employees in office, clerical, and technical work and in the food services department while Ryerson argued that these

employees should be divided into three bargaining units: 1) all career employees, 2) all non-career employees, except those working in the food services department, and 3) non-career employees in the food services department. Career employees are differentiated from non-career employees not by the work performed, but rather by the terms and conditions of their employment⁶⁵. The Board ruled in the union's favour to establish one bargaining unit, with students and part-timers excluded. With regard to the exclusion of students and part-timers, the Board once again cited *Toronto Airport Hilton*, reiterating the stand taken that despite the fact that full and part-time workers «often perform the same tasks», they «are always separated because they do not share a community of interest»⁶⁶.

Regarding its inclusionary approach to permanent employees and those employed as casuals or temporary workers, the Board cited nine precedent cases in which the Board consistently refused to separate these workers⁶⁷. This had been the policy even though it was recognized that «the interests of these two groups of employees sometimes diverge»⁶⁸. The Board acknowledged that «for much the same reason as the part-time worker», temporary/full-time employees may desire terms and conditions of employment different from permanent/full-time employees. However, on the grounds of limiting the number of bargaining units to «avoid undue fragmentation», the Board ruled in favour of overlooking possible divergent interests and focussed instead on the community of interest between permanent and temporary full-time workers⁶⁹. Further, the Board speculated on the fine distinction between temporary and permanent employment. The Board reasoned that a fixed term employee may be hired with the promise of a possible future permanent position, and in this circumstance, one's bargaining interests may gradually change as s/he «begins to perceive a permanent nexus within the employment relationship»⁷⁰.

In this regard, the Board's position on part-time workers seems particularly arbitrary. Since it is accepted practice for employers to initiate employees through part-time employment, later promoting them to full-time status when a position becomes available, this same argument is easily applicable to part-time workers⁷¹. Just as «one cannot always forecast» the temporariness or permanency of an employee's term of work, one cannot necessarily forecast its temporal limits.

The relationship between part-timers and students and other workers may be further complicated by collective bargaining rights. In some cases, the community of interest argument overrides other considerations, even in instances where circumstances would seem to have necessitated inclusion rather than exclusion of part-timers and/or students. In two cases, *Jutras Die Casting Limited* and *VS Services Limited*, both parties agreed to the ex-

clusion of part-timers and students and the majority Board agreed⁷². The dissenter argued that since in the first case there had been a history of hiring students, yet no history of hiring part-timers, then the students would possibly face difficulty in exercising their collective bargaining rights. The establishment of organizing rights should outweigh the possible disparity of interest between students and full-time workers. In these cases, the objective of granting collective bargaining rights was outweighed by the community of interest concerns.

Drawing on an argument regarding the company and similar operations' practices with the municipality in *The Regional Municipality of Peel*, on agreement of both parties, the Board ruled to exclude students⁷³. While once again bargaining rights may have been effectively denied to this group which is, for the most part, not a viable unit, the strength of the history and prevailing patterns in the area along with the agreement of the parties seemed to outweigh the collective bargaining rights consideration.

The following year in *Inter-City Bandag (Ontario) Limited*, the parties had agreed to exclude students⁷⁴. In this company there had not been a history of employing part-timers so the question arose as to the placement of part-time workers in the case of possible future employment. The Board argued that since there were no part-timers at the time of application nor previously, part-time workers would be included in the full-time unit, while students would be excluded. Referring to its previous ruling in *Peel*, the Board advanced a flexible approach to the relation between part-timers, students, and other workers:

... the Board is of the view that its tandem principle relating to part-time employees and students ought to be less rigidly applied, and will do so both in dealing with full-time and with part-time applications. Where the parties are able to agree on the part-time/student question, whether it be to combine or sever the two groups (and whatever the employment history may be), the Board will, in the absence of special circumstances, accept that agreement.

Where there is a history of hiring only one or other of the two groups, the Board will tend, in the absence of agreement by the parties, to exclude the 'existent', but not the 'non-existent' group from a full-time unit.

Where, however, a full-time unit excludes part-time employees and students, and an application is made for the part-time unit, the Board (again in the absence of agreement by the parties) will tend to keep the two categories combined, even though only one 'exists', in order to avoid undue fragmentation.

Similarly, where both groups exist and there is no agreement between parties, the Board will likely treat the two groups in tandem, having regard to the community of interest which often exists between the two, as well as the usual concern over fragmentation.⁷⁵

In brief, while the Board has generally tended to identify a community of interest between part-time workers and students, this position is often modified by intervening factors such as collective bargaining rights, history of hiring practices, and agreements between parties. In particular, it seems from the cases reviewed here that in recent years the Board has moved away from a more exclusive concern with the community of interest to a more specific need to address the issue of fragmentation⁷⁶. This shift in focus and more flexible approach to part-time employees, does not, however, reflect a concession to labour or an effort to de-marginalize part-time workers.

On the grounds of facilitating the collective bargaining process, the Board seeks to avoid fragmentation which may lead to «competitive bargaining». Where there are too many units within an industry, several problems in managing them may occur: 1) one unit may demand increased wages or benefits based on another unit's victories; 2) units may engage in sympathetic activities during a strike action and they may involve not only workers within an integrated industry, but also within separate independent operations; 3) the process of bargaining may become increasingly complex; and 4) with a greater number of units, negotiations are more numerous and more complex and the chance of reaching a deadlock, precipitating strike action, and involving other employees and industries escalates⁷⁷. For the Board, facilitating the collective bargaining process appears to mean avoiding work stoppages. In short, the Board functions to manage conflict.

CONCLUSION

Within contemporary Canadian political economy, there are two general perspectives on the state. The instrumentalist view has tended to approach the state as a direct instrument of ruling class domination. From this perspective, the state functions to undermine efforts by workers and their organizations to challenge the social status quo. The structuralist approach envisions a more subtle, complex, and contradictory role for the state and its agencies. In the short run, the state may facilitate working-class victories and reject the exaggerated claims made by factions within the dominant class. Only when viewed in the long run does it become clear that the state functions fundamentally to preserve the class system, to protect capital, and to maintain the political hegemony of the dominant class.

The present research into OLRB rulings on part-time workers between 1976 and 1986 suggests that this latter perspective is more useful for understanding the OLRB's role in the collective bargaining process. Board decisions cannot be explained as simply concessions to employers' 'divide

and rule' strategies or as efforts to impede the unionization of part-time workers. As the data indicate, the OLRB's rulings have, on occasion, saved workers from employers' tactics. Moreover, labour's historic struggle must be credited with achieving decisions favourable to its interests. The *OLR Act*, which the Board was established to implement, in itself, represents a significant victory for labour protection.

In the long run, however, the Board has not facilitated the unionization of part-time workers. Its interpretation of the *Act*, its definition of a community of interest, its general policy of excluding part-timers from bargaining units, and its view of the labour market have worked to discourage unionization among part-time workers. In particular, the Board has committed itself to a questionable stereotype of part-time workers and this has legitimated their exclusion from the collective bargaining process. Although there have been exceptions, and exceptions to exceptions, the net result has left part-time workers as a marginal, inexpensive, expendable, and largely unorganized labour reserve in Ontario.

The role of the OLRB has been mitigated, in part, by contradictions within working-class organizations which, for example, by requesting exclusion of part-time workers, have contributed to their marginalization. Unions have been caught in a «catch-22». By adopting an inclusionary policy on part-time work, embattled organizations may jeopardize the success of their organizing drives. However, by accepting the exclusion of part-time workers, they may be tacitly accepting a collective bargaining process which is «a process of defensive accommodation to the existing power structure»⁷⁸ and which is involved in the day-to-day management of conflict and individual grievances rather than in work toward structural transformation. In short, conflicting interests within the working class, coupled with a collective bargaining structure concerned with short-term reforms and gains have contributed to the marginalization of part-time workers⁷⁹. Within this context, the precise contributions of the OLRB rulings to impeding part-time workers' unionization are obscured.

Evaluating the state's position by simply counting the 'victories' for each side overlooks internal divisions among working or dominant classes. Arguments made before the Board may represent the position of a particular faction of labour or capital and its immediate desire to seek a favourable decision. In reviewing the cases it was clear that the Board may have ruled in favour of a faction of labour, say craft workers, and in this process may have appeared to rule against capital. To conclude that the state simply met labour's demands or simply balanced the needs of the two sides ignores the reality that neither unions nor managements have been consistent with their arguments for or against the inclusion of part-timers in

bargaining units. Different factions of labour and capital, often employing different strategies, have brought their interests before the Board.

The role of the Board is also obscured by its public commitment to the position of neutral arbiter. To conclude that the state maintained neutrality in the labour relations process would ignore its essential legitimization function and the social, structural, and historical forces shaping its actions. The state's commitment to neutrality softens labour's antagonism in the short run, while leaving circumstances and structural features largely unaltered. Moreover, OLRB decisions must not be analyzed as isolated events in labour relations. Drawing conclusions regarding the state's neutrality or bias by focussing on OLRB decisions alone is somewhat limited. Positions adopted by the Board may exemplify the scope and limited variation in interpretation of the *OLR Act*. Although Board members may differ in their own particular frameworks, they are somewhat constrained in their role by the historical design and interpretation of the *Act*.

In brief, the research findings are consistent with a structuralist approach to the state. The OLRB cannot be said to have adopted an unwavering policy on part-time workers. Patterns of agreement with union requests and numerous exceptions (as well as exceptions to exceptions) indicate that the Board plays a complex and, at times, contradictory role in arbitrating between union and employer positions. While the Board cannot be interpreted as a simple instrument of dominant class interests, it also cannot be viewed as an impartial judge. The overall pattern of decisions along with stereotypical pronouncements on part-time workers indicate that the Board has played its part in perpetuating the status quo for part-time workers. In so doing, whatever the intentions of individual Board members, the Board in the long run has functioned to maintain a structure with limited labour rights and power.

FOOTNOTES

1 See, for example, Paul CRAVEN, *An Impartial Umpire: Industrial Relations and the Canadian State, 1900-1911*, Toronto, University of Toronto Press, 1980; Roy J. ADAMS, «The Extent of Collective Bargaining in Canada», *Relations industrielles/Industrial Relations*, vol. 39, no. 4, 1984, pp. 655-663; George W. ADAMS, «The Ontario Experience with Interest Arbitration», *Relations industrielles/Industrial Relations*, vol. 36, no. 1, 1981, pp. 225-250; A.W.R. CARROTHERS, «An Outlook on Labour Relations in Canada», *Relations industrielles/Industrial Relations*, vol. 38, no. 3, 1983, pp. 648-657; Leo PANITCH, editor, *The Canadian State*, Toronto, University of Toronto Press, 1977; Carl J. CUNEO, «State, Class, and Reserve Labour: The Case of the 1941 Canadian Unemployment Insurance Act», *Canadian Review of Sociology and Anthropology*, vol. 16, no. 2, 1979.

2 See, for example, David C. MCPHILLIPS, «Duty of Fair Representation: Recent Attitudes in British Columbia and Ontario», *Relations industrielles/Industrial Relations*, vol. 36, no. 4, 1981, pp. 803-825; Norman A. SOLOMON, «The Negotiation of First Agreements Under the Canada Labour Code: An Empirical Study», *Relations industrielles/Industrial Relations*, vol. 40, no. 3, 1985, pp. 458-471; and Norman A. SOLOMON, «The Negotiation of First Agreements in Ontario: An Empirical Study», *Relations industrielles/Industrial Relations*, vol. 39, no. 1, 1984, pp. 23-35.

3 See The Bank Book Collective, *An Account to Settle*, Vancouver, Press Gang Publishers, 1979, and Allen PONAK and Larry F. MOORE, «Canadian Bank Unionism: Perspectives and Issues», *Relations industrielles/Industrial Relations*, vol. 36, no. 1, 1981, pp. 3-31.

4 See, for example, S. MUTHUCHIDAMBARAM, «Settlement of First Collective Agreement: An Examination of the Canada Labour Code Amendment», *Relations industrielles/Industrial Relations*, vol. 35, no. 3, 1980, pp. 387-408.

5 This confusing and contradictory image of labour board actions is also apparent in recent events. Within a three day period the *Globe and Mail* ran news items in which labour relations boards played both pro and anti union roles. On March 11, 1986, it was reported that since the OLRB does not protect collective agreements, when there was a change of contractors, 250 cleaners (mostly women) in the Food and Service Workers' Union had been faced with either losing their jobs or losing their collective agreement and effectively breaking their union. While the situation was momentarily resolved through the intervention of the Premier of Ontario, the existing legislation was left intact. However, on March 12, 1986 another front-page item revealed that the Nielsen Report had recommended that the CLRB be altered since it is 'seen to be pro-labour'. Finally, on March 14, 1986 the OLRB decision to allow a group of seven National Trust branches to constitute one bargaining unit was heralded as a 'gain' and 'boon' for unions.

6 Wendy WEEKS, «Collective Bargaining and Part-Time Work in Ontario», *Relations industrielles/Industrial Relations*, vol. 33, no. 1, 1978, p. 80.

7 *Ibid.*, p. 88.

8 Julie WHITE, *Women and Part-Time Work*, Ottawa, The Canadian Advisory Council on the Status of Women, 1983, p. 113. In a recent work investigating the legal issues affecting 'atypical' workers, Geoffrey England argued that part-timers, casuals, and other atypical workers are not treated in a manner equal to 'traditional' employees and this is due, in part, to the failure of collective bargaining legislation and the provincial boards to place 'atypicals' in a position to attain equivalent negotiated benefits. Geoffrey ENGLAND, *Part-Time, Casual and Other Atypical Workers: A Legal View*, Research and Current Issues Series Number 48, Kingston, Queen's University, Industrial Relations Centre, 1987.

9 Each year over 200 (a small fraction) of the annual hearings and decisions of the OLRB are reported. Only cases involving important decisions or precedents or other matters of interest are recorded. The 48 cases examined here were brought forth by a variety of unions and a range of companies in both public and private sectors. The reasons for the hearings were diverse and included various types of applications: for certification of all employees; for separate full-time and part-time units; to request exclusions of part-timers, seasonals, casuals or students; for certification of one group — usually full-timers — only; for fair representation; and for narrowing or broadening the existing scope of the unit. Some of these cases were more extensively dealt with by the Board when it determined, for example, that it was necessary to review the particular issue in detail. Others were dealt with in a more cursory fashion with the Board citing parallels to earlier cases or fact situations. In all cases it is documented whether or not the decision reached was unanimous. The Board consists of three people: a representative from business, a union representative and a 'neutral' party. Where a majority decision was reached, the dissenter's view was recorded.

10 Because only a limited number of cases are reported each year, it is difficult to discuss possible patterns in the appearance of cases and to establish relationships between a growing or declining number of relevant cases and the general political and economic climate. The number of cases pertaining to part-time work which appeared each year during the period under study was: 1976-6; 1977-4; 1978-3; 1979-7; 1980-9; 1981-4; 1982-2; 1983-7; 1984-3; 1985-2; 1986*-1. (*January to July only)

11 WEEKS, *op. cit.*, p. 91.

12 Leo PANITCH, «The Role and Nature of the Canadian State», in Panitch, *op. cit.*, pp. 3-4.

13 CUNEO, *op. cit.*, p. 148.

14 See James O'CONNOR, *The Fiscal Crisis of the State*, New York, St. Martin's Press, 1973.

15 Vivienne WALTERS, «Occupational Health and Safety Legislation in Ontario: An Analysis of Its Origins and Contents», *Canadian Review of Sociology and Anthropology*, vol. 20, no. 4, 1983, p. 414 and p. 429.

16 There is no consensus as to what constitutes part-time work. For example, the *Report of the Commission of Inquiry into Part-Time Work* commented: «The first major international study of part-time work, a 50-nation survey conducted by the International Labour Organization in 1963, concluded that 'there is no universally recognized definition of part-time employment. ... In most countries there is no statutory description of the concept and no definition is accepted for all purpose», (Joan Wallace, *Part-Time Work in Canada*, Ottawa, Labour Canada, 1983, p. 50). Despite the recent rapid growth in the part-time labour force, analysts are still far from a universally accepted standard of part-time work. At present the *Labour Force Survey* defines part-time work as working less than 30 hours a week. Internationally, there continues to be considerable variation in terms of the hours which signify a part-time worker. In addition, there are differences amongst part-time workers. Part-timers may be categorized as permanent or temporary workers, and in some circumstances, may be labelled as seasonals or casuals.

17 *The Labour Force Survey (LFS)*, May, 1985.

18 *LFS*, January, 1985.

19 WALLACE, *op. cit.*, pp. 46-57.

20 See, for example, WHITE, *op. cit.*, WALLACE, *ibid.*, and ENGLAND, *op. cit.*

21 *LFS*, January, 1985, p. 135.

22 WALLACE, *op. cit.*, p. 72.

23 *Ibid.*, p. 93.

24 Roy ADAMS, *op. cit.*, p. 662; ENGLAND, *op. cit.*

25 H.W. ARTHURS, D.D. CARTER and H.J. GLASBEEK, *Labour Law and Industrial Relations in Canada*, Toronto, Butterworths, 1981, p. 173.

26 Paul WEILER, *Reconcilable Differences: New Directions in Canadian Labour Law*, Toronto, The Carswell Company Limited, 1980, pp. 154-5.

27 *Ibid.*, p. 155.

28 *The Board of Governors of Ryerson Polytechnical Institute*, [1977] O.L.R.B. Rep. 707 at 709-10.

29 To determine whether or not an employee should be categorized as a part-time worker, the Board considers the period of seven weeks immediately prior to the date of application as a representative period in which to assess the number of hours worked. If during four or more of these seven weeks the employee worked more than 24 hours per week, then the employee is defined as full-time and falls within a bargaining unit of full-time employees. If the Board determines that the seven week period immediately prior to the application is 'unrepresentative' of the nature of the employee's status, that is, where within the seven week period the employee had been absent due to illness, accident, vacation, or for other reasons,

then it will elect another seven week period that is more representative. See *Trenton Memorial Hospital*, [1980] O.L.R.B. Rep. 116; *Holiday Inn Yorkdale*, [1976] O.L.R.B. Rep. 709.

30 *Board of Education for the Borough of Scarborough*, [1980] O.L.R.B. Rep. 1713 at 1718.

31 This tendency was also noted by WEEKS, *op. cit.*

32 See, for example, *ibid.*, p. 85.

33 For explanation, see ARTHURS, CARTER, and GLASBEEK, *op. cit.*, pp. 174-9.

34 *Premier Operating Corporation*, [1983] O.L.R.B. Rep. 2066.

35 *Evercrete Limited*, [1979] O.L.R.B. Rep. 749 at 749. Similar rulings were made in *Armbro Materials and Construction Limited*, [1983] O.L.R.B. Rep. 1389 and *Freure Homes Limited*, [1983] O.L.R.B. Rep. 1839.

36 *Inland Publishing Co. Limited*, [1969] O.L.R.B. Rep. March at 1341.

37 *Ontario Food Division (Food City) of the Oshawa Group Limited*, [1978] O.L.R.B. Rep. 826.

38 *Ibid.*, at 828.

39 If the one remaining worker indicates that s/he does not desire representation, then the Board will rule that separate units be established.

40 *The Corporation of the Township of Schrieber*, [1981] O.L.R.B. Rep. 12.

41 *Tip Top Tailors*, [1979] O.L.R.B. Rep. 726.

42 *Mount McKay Feed Company, Limited*, [1981] O.L.R.B. Rep. 105 at 105.

43 ENGLAND, *op. cit.*, pp. 10-11. In one case cited by England, the collective agreement included articles stating that part-timers could be hired for evening work only and as a «supplement» to the main work force. Their hiring was not to result in losses of hours to any full-timers, including those on lay-offs. Since this agreement provided part-timers with the same minimum wage and union dues check-offs, the OLRB ruled for inclusion by voluntary association. Unions may not bargain about part-timers who are already organized and in a separate bargaining unit.

44 *K Mart Canada Limited*, [1981] O.L.R.B. Rep. Sept. 1250, cited in the *Board of Education for the City of Toronto*, [1983] O.L.R.B. Rep. 273 at 281.

45 *Ibid.*

46 *Evercrete Limited*, *op. cit.*; *Armbro Materials and Construction Limited*, *op. cit.*; *Premier Operating Corporation*, *op. cit.*

47 *Kafko Manufacturing Limited*, [1979] O.L.R.B. Rep. 994; *VS Services Ltd.*, [1980] O.L.R.B. Rep. 380; *Paris Poultry Products Limited*, [1978] O.L.R.B. Rep. 453.

48 *Waterloo County Roman Catholic Separate School Board*, [1977] O.L.R.B. Rep. 856; *Duncanwoods Realty Limited*, [1979] O.L.R.B. Rep. 385; *Cooper's Crane Rental Limited*, [1980] O.L.R.B. Rep. 1286.

49 *Tip Top Tailors*, *op. cit.*; *Tempsec Inc.*, [1985] O.L.R.B. Rep. 756.

50 *Intercity Foods Services Inc.*, [1977] O.L.R.B. Rep. 824; *Mount McKay Feed Company Limited*, *op. cit.*

51 *The Board of Education for the City of Toronto*, *op. cit.*; *Leon's Furniture Limited*, [1976] O.L.R.B. Rep. 232.

52 *Leon's Furniture Limited*, *ibid.* at 232.

53 *The Board of Governors of Ryerson Polytechnical Institute*, *op. cit.*, at 709.

54 *Toronto Airport Hilton*, [1980] O.L.R.B. Rep. 1330 at 1332.

55 *Board of Education for the Borough of Scarborough*, *op. cit.*, at 1717.

56 WEEKS, *op. cit.*, p. 90.

57 WALLACE, *op. cit.*, pp. 60-63. On average part-time workers have shorter job tenure compared to full-time workers. However, when age is controlled, job tenure differences between full and part-time workers are substantially reduced among those in their prime working years (25 to 64 years), p. 61.

- 58 *Board of Education for the Borough of Scarborough, op. cit.*, at 1717-1718.
- 59 *Spramotor Ltd.*, [1976] O.L.R.B. Rep. 215; *Board of Education for the Borough of Scarborough, ibid.*, at 1713.
- 60 *Consumers Distributing Company Limited*, [1982] O.L.R.B. Rep. 26.
- 61 *Ibid.*, at 26.
- 62 There were variations in the fact situations in these cases and in the companies' and unions' positions. *St. Raphael's Nursing Homes Limited*, [1977] O.L.R.B. Rep. 580; *Waterloo County Roman Catholic Separate School Board, op. cit.*; *Plummer Memorial Public Hospital*, [1979] O.L.R.B. Rep. 433; *Dominion Steel, Export Co. Ltd.*, [1979] O.L.R.B. Rep. 953; *Kafko Manufacturing Limited, op. cit.*; *Toronto Airport Hilton, op. cit.*; *Stratford Shakespearean Festival Foundation of Canada*, [1984] O.L.R.B. Rep. 1778; *Elizabeth Fry Society of Ottawa*, [1985] O.L.R.B. Rep. 1026.
- 63 *Toronto Airport Hilton, ibid.*, at 1331.
- 64 *Board of Governors of Ryerson Polytechnical Institute*, [1984] O.L.R.B. Rep. 371.
- 65 *Ibid.*, at 372. Non-career employees are hired on contract to do particular job for a predetermined period.
- 66 *Ibid.*, at 376.
- 67 Among those cited were *Spramotor Limited, op. cit.*, *Board of Education for the Borough of Scarborough, op. cit.*, and *Board of Education for the City of Toronto, op. cit.*
- 68 *Board of Governors of Ryerson Polytechnical Institute, op. cit.*, at 376.
- 69 *Ibid.*
- 70 *Ibid.*
- 71 For example, many women returning to the paid labour force after a number of years working exclusively in the home, choose and in fact are counselled to start on a part-time basis, with a view toward permanency in the future.
- 72 *Jutras Die Casting Limited*, [1980] O.L.R.B. Rep. 330; *VS Services Ltd., op. cit.*
- 73 *The Regional Municipality of Peel*, [1979] O.L.R.B. Rep. 1285.
- 74 *Inter-City Bandag (Ontario) Limited*, [1980] O.L.R.B. Rep. 324.
- 75 *Ibid.*, at 326. This same lone of reasoning was applied in *Tempsec Inc., op. cit.*
- 76 In *Toronto General Hospital*, [1986] O.L.R.B. Rep. 566, the Board referred to *Inter-City Bandag (Ontario) Limited, op. cit.*, noting that it will agree to separate units for part-timers and students if there are no special circumstances at issue. Where there is a conflict, however, the Board would group the two into one bargaining unit «to avoid undue fragmentation and have regard to a perception that the two groups share a community of interest».
- 77 WEILER, *op. cit.*, pp. 158-9.
- 78 T. CLARKE, «Introduction: The Raison d'être of Trade Unionism» in T. Clarke and L. Clements, editors, *Trade Unionism Under Capitalism*, London, Fontana, 1977. See also, Leo PANITCH and Donald SWARTZ, «Towards Permanent Exceptionalism: Coercion and Consent in Canadian Industrial Relations», *Labour/Le Travail*, vol. 13, Spring 1984, pp. 133-157.
- 79 By exerting pressure, in particular concerted pressure, on the state through the OLRB, labour can effect some desirable changes. Unions must continue to articulate a strong campaign for the unionization of part-time workers, thereby challenging the OLRB's outmoded conception of the part-time worker and rationale for exclusions. Labour must clearly and consistently argue for the elimination of the Board's exclusionary policy. These objectives, while perhaps more consistent than those previously adopted, would represent a clear break from current policies which inadvertently have maintained substantial rifts within the movement. How successful such a programme would be cannot be determined at this point. However, any policy which addresses one of labour's roadblocks — divisiveness among members — is worth evaluating.

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La Commission des relations du travail de l'Ontario et les travailleurs à temps partiel

Cet article traite des décisions de la Commission des relations du travail de l'Ontario relatives aux travailleurs à temps partiel entre 1976 et 1986. On y soutient que l'approche «structuraliste» en la matière est indispensable pour comprendre le rôle de la Commission dans le processus de la négociation collective. Dans cette perspective, on estime que son orientation se manifeste d'une manière subtile, complexe, voir contradictoire. Dans l'immédiat, elle peut paraître favoriser les revendications de la classe laborieuse en rejetant les réclamations de la classe dominante. À plus long terme, cependant, elle procède de façon à faire durer le système de classes, à protéger le capital et à maintenir l'hégémonie de la classe dominante.

Les décisions de la Commission touchant les travailleurs à temps partiel ne peuvent s'expliquer comme de simples concessions aux intérêts des employeurs ou comme des tentatives en vue d'entraver la syndicalisation des temps partiels. Comme les statistiques le démontrent, les décisions ont souvent donné raison aux requêtes des syndicats. À la longue, toutefois, la Commission n'a pas facilité la syndicalisation de cette catégorie de travailleurs. Son interprétation de l'*Ontario Labour Relations Act*, sa définition d'une «communauté d'intérêts», sa politique générale d'exclure les temps partiels des unités de négociation et sa conception du marché du travail ont joué contre la syndicalisation des travailleurs à temps partiel. La Commission s'en est remise à un stéréotype contestable de ces salariés et cela a justifié leur exclusion du processus de la négociation collective. Bien qu'il y ait eu des exceptions (et des exceptions aux exceptions), le résultat en est que les temps partiels sont devenus en Ontario une réserve de travailleurs fort inorganisés, marginaux, peu coûteux et qui ne cesse de s'accroître.

Les contradictions à l'intérieur des organisations ouvrières ont pu partiellement excuser la responsabilité de la Commission. Les syndicats sont en quelque sorte coincés. En soutenant l'inclusion des temps partiels dans les unités de négociation, ils peuvent mettre en danger le succès de leurs campagnes de recrutement. Par ailleurs, en acceptant leur exclusion, ils s'engagent tacitement dans un régime de négociations collectives qui est conforme aux rapports de force existants et se trouvent ainsi amenés au règlement des conflits et des griefs individuels au jour le jour. Les intérêts opposés au sein du monde ouvrier ainsi qu'une structure de négociation visant à des réformes et à des avantages immédiats ont favorisé l'état de marginalisation des travailleurs à temps partiel et masqué la participation de la Commission dans ce processus.

Le rôle de la Commission est aussi rendu équivoque par la nécessité où elle se trouve d'agir comme arbitre impartial. Il suffit de considérer les décisions de la Commission concernant les travailleurs à temps partiel et sa manière courante de justifier leur exclusion pour se rendre compte que, malgré sa neutralité «officielle», elle s'est employée à conserver le statut marginal des temps partiels.

En résumé, les constatations de la recherche démontrent que la Commission joue un rôle complexe et parfois contradictoire en agissant en qualité d'arbitre entre les points de vue des syndicats et des employeurs. Même si on peut noter certaines victoires syndicales, le contenu général des décisions et les déclarations de principes stéréotypées en ce qui a trait à cette catégorie de salariés indiquent que la Commission se comporte de manière à maintenir le *statu quo* pour les temps partiels.

LA MOBILISATION DES RESSOURCES HUMAINES TENDANCES ET IMPACT

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ISBN 2-7637-7107-7

1 volume, 1986, 199 pages - \$17.00

Les Presses de l'Université Laval

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